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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

FRIENDS OF OCEANO DUNES, INC., et al.,
Plaintiffs.

v.

COUNTY OF SAN LUIS OBISPO, et al.,
Defendants.

CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION,
Real Party-in-Interest.

SIERRA CLUB,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION, et al.,
Defendant.

Consolidated Case Nos.
CV 070591/CV 080344

RULING AND ORDER SUSTAINING
STATE OF CALIFORNIA PARKS
AND RECREATION
DEPARTMENT'S DEMURRER
WITHOUT LEAVE TO AMEND

This case is before the Court on the demurrer of the State of California Parks and Recreation Department (State Parks Department) to the Sierra Club's First Amended Petition for Peremptory Writ of Mandate. After briefing and several oral arguments, the Court now rules as follows.

1 In 1934, the State Parks Department first acquired lands for recreational
2 purposes at Pismo State Beach. Since that time, enormous population growth, coupled
3 with changes in travel and recreation trends, has put tremendous pressures on Pismo
4 State Beach, resulting in overcrowded conditions and stressed natural resources at the
5 Beach and at the Oceano Dunes State Vehicular Recreation Area (SVRA).

6 The Public Resources Code provides that, after each unit of the State Park
7 system is classified, the State Parks Department must prepare a General Development
8 Plan ("GDP") and resource management plan for that unit. In 1975, the Department
9 prepared such plans for Pismo Beach, including one for Pismo State Beach, and the
10 other for the area now known as the Pismo Dunes State Vehicular Recreational Area.
11 The GDP, originally consisting of approximately 89 pages, is supposed to guide the
12 growth of these areas, the management of critical resources, and serve as an
13 informational document for the public and Legislature. It has been periodically
14 reviewed and updated by the State Parks Department.

15 Under the Coastal Act, affected local governments must prepare a Local Coastal
16 Plan (LCP) for coastal zones within their jurisdictions. (Pub. Resources Code, § 30500,
17 subd.(a).) The LCP can include land use plans, zoning ordinances, and other
18 mechanisms to protect sensitive coastal resource areas. (*Id.* at § 30108.6.) Once the
19 California Coastal Commission ("Commission") has certified an LCP as being
20 consistent with that statute, the local government is responsible for issuing coastal
21 development permits in accordance with the LCP. (*Id.* at § 30519 subd. (a) and
22 § 30600.) The local government is also required to determine compliance with the
23 Coastal Act. (*Id.* §§30600.5 and 30604 (a) (b)).

24 On June 17, 1982, the Commission granted Coastal Development Permit No. 4-
25 82-300 to the State Parks Department for purposes of operating the park as an off-road
26 vehicle area, and in order to keep such vehicles out of sensitive vegetated dunes and
27 wetlands environment. This permit has been amended on multiple occasions, the last of
28 which was in 2002.

1 As part of its GDP, the State Parks Department has established a long-standing
2 goal to purchase various areas within the Pismo Beach State Park system that are now
3 leased from other jurisdictions. The current controversy results from the County of San
4 Luis Obispo's (County) 2007 proposal to sell its 584-acre La Grande Tract portion of
5 the SVRA to the State Parks Department.

6 Prior to the sale, and as required by Government Code §65402, the County
7 Planning Commission conducted an analysis and concluded that the proposed sale of
8 the La Grande Tract to the State Parks Department would be inconsistent with portions
9 of the County's General Plan and LCP. More specifically, the Planning Commission
10 determined that the sale would be inconsistent with the County's General Plan (Open
11 Space Policy No. 30 of the Open Space Element) and a LCP provision [Figure 4 of the
12 South County Coastal Plan (the "Buffer" map)]

13 On April 17, 2007, the Board of Supervisor's (Board) partially denied The
14 Friends of Oceano Dunes, Inc.'s (Friends) appeal of the Planning Commission's
15 decision. In essence, the Board's conformity report concluded that the sale would be
16 inconsistent with the General Plan. The sale of the property has since been either
17 abandoned or postponed.

18 Although the proposed sale did not go forward, two lawsuits resulted from the
19 proposed sale, which cases were ultimately consolidated before this Court (*Friends of*
20 *Oceano Dunes, Inc. v. County of San Luis Obispo* CV 070591 and *Sierra Club v. State*
21 *of California* CV 080344). In the *Sierra Club* suit, plaintiff seeks a CCP §1085
22 traditional writ of mandate to compel the State to operate the SVRA in compliance with
23 the County's LCP. Sierra Club contends that the Figure 4 buffer map delineates the La
24 Grande Tract as a buffer zone, which does not permit off road vehicle use. Sierra Club
25 argues that the State Parks Department is operating the SVRA in violation of the
26 County's LCP, and claims that the State Parks Department must revise its GDP to
27 comply with the LCP.

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1 The State Parks Department demurrers to Sierra Club's petition on the following
2 grounds: (1) lack of ripeness; (2) failure to comply with the 60 day statute of
3 limitations; and, (3) inconsistency and unenforceability of certain LCP provisions. The
4 County and Commission oppose the State Parks Department's claim that the LCP is
5 internally inconsistent.

6 The crux of the demurrer is that the County's LCP does not, either standing
7 alone or in conjunction with other statutes and regulations, require the State to cease its
8 operation of the SVRA. The State contends that the LCP is only made applicable
9 through the Commission, or through the County's consideration of a Coastal
10 Development Permit or amendment.

11 The State Parks Department asserts that it has been operating the SVRA based
12 upon its 1982 CDP issued by the Commission, which allows off-road vehicle use on the
13 La Grande Tract. Over the past 28 years, that permit has been amended five times,
14 most recently in 2002. Because issuance of the permit, and its several amendments,
15 were never challenged by Sierra Club, the State Parks Department argues that there is
16 no basis in law for Sierra Club to attack the State Parks Department's operation of the
17 SVRA.

18 Sierra Club counters that Standard 4 of the approved LCP requires the GDP to
19 be revised to comply with the LCP. Sierra Club contends the State Parks Department
20 has never revised its GDP, as is evidenced by the fact that off road vehicle use is
21 allowed in the buffer zone delineated in the Figure 4 map. Sierra Club asserts that
22 pursuant to CCP §1085 it can compel the State Parks Department to proceed with its
23 statutory duty to revise its GDP to comply with the LCP.

24 Although the Sierra Club attempts to cast this case as a breach of a ministerial
25 duty, the proper forum for obtaining judicial review of the provisions of an LCP, a
26 CDP, or a GDP is a CCP §1094.5 petition for a writ of administrative mandamus.
27 Judicial review of such administrative agency actions is of limited duration, and
28 requires actionable governmental conduct. Likewise, challenges to permits and plans

1 must take place within narrowly specified time frames. Under the Coastal Act, for
2 example, any challenge to the approval of a CDP must have been brought within 60
3 days of the date of a permit issuance or amendment. *See* Public Resources Code
4 §30801. Concededly, no such challenge was ever brought. Likewise, any challenge to
5 the General Development Plan should have been brought within 90 days of the effective
6 date of any amendment. No such challenge was ever filed.

7 Nor is a ministerial duty found within other provisions of the Public Resources
8 Code. Contrary to Sierra Club's assertion, Public Resource Code §§30809 and 30810
9 merely empower the Commission to issue cease and desist orders against any person or
10 governmental agency that undertakes an action in contravention of a permit previously
11 issued by the Commission. The Commission has not issued a cease-and-desist order,
12 and has not exercised its discretionary authority do so in relation to the GDP or the
13 CDP.

14 Similarly, Public Resource Code § 5003 provides no ministerial duty requiring
15 the State Parks Department to comply with Figure 4. This provision consists of a
16 "general" powers and duties clause allowing the Department to establish rules and
17 regulations not inconsistent "with law for the government and administration of the
18 property under its jurisdiction." There is nothing in this provision creating a ministerial
19 duty requiring the Department to revise any particular GDP.

20 In essence, the Court cannot conclude that the provisions of LCP Standard 4,
21 and Figure 4, impose upon the State Parks Department a clear ministerial obligation to
22 bring the operation of the SVRA into compliance with Figure 4. Accordingly, the
23 Sierra Club cannot now contest the GDP to operate off road motor vehicles within the
24 SVRA on the La Grande Tract. Likewise, the State Parks Department, in its demurrer,
25 cannot contest an allegedly inconsistent provision in the County's LCP. The Court
26 cannot reach the merits of this case because there is no ongoing permit amendment
27 process or agency action that is subject to judicial review. "California courts have
28 consistently held that an administrative decision which has not been overturned through

1 administrative mandamus is absolutely immune from collateral attack." (1995) *Citizens*
2 *for Responsible Dev. v. City of W. Hollywood*, 39 Cal. App. 4th 490, 505.

3 This conclusion does not in any way minimize the importance of the substantive
4 issues presented in the litigation. The County's own governing body has preliminarily
5 determined that the use of off-road vehicles, on at least part of the SVRA, is
6 inconsistent with its own General Plan, the County LCP, and the Coastal Act. While
7 the State Parks Department and the Friends take a different view, the County's position
8 is apparently supported by the Commission. Plainly these important policy and legal
9 issues need to be addressed. However, the time is not yet ripe for the Court to intervene
10 in this dispute.

11 Although the Sierra Club is concerned that the issue concerning the legality of
12 using off-road vehicles on the La Grande Tract may remain forever in "legal limbo," the
13 Court does not agree. As a practical matter, all parties concede that some sort of legal
14 challenge can be brought when the GDP is amended, or when relevant portions of the
15 County's LCP or General Plan are amended. Given that the State Parks Department
16 remains interested in purchasing the La Grande Tract, and given that the County must
17 periodically revise and update its LCP and General Plan, it is only a matter of time until
18 judicial review will ripen.

19 Because the Court does not see any way that this petition can be amended to
20 state a valid cause of action at this point in time, the State Parks Department's demurrer
21 to Sierra Club's First Amended Petition is sustained without leave to amend.

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23 DATED: October 4, 2010

_____/s/_____
24 CHARLES S. CRANDALL
25 Judge of the Superior Court
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